

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SANDRA D. BELT,

Plaintiff,

v.

THE GEO GROUP, INC., COUNTY
OF DELAWARE, DELAWARE
COUNTY BOARD OF PRISON
INSPECTORS, GEORGE W. HILL,
JOSEPH FRANKLIN HENDERSON, and
JOHN AND JANE DOE,

Defendants.

CIVIL ACTION

No. 06 - 1210

MEMORANDUM

ROBERT F. KELLY, Sr. J.

JUNE 12, 2006

Defendants The Geo Group, Inc., County of Delaware, Delaware County Board of Prison Inspectors (“DCBPI”), and George W. Hill (collectively, “Moving Defendants”) request this Court to dismiss the three count Amended Complaint filed by Plaintiff Sandra D. Belt (“Belt”). Belt’s claims stem from an alleged sexual assault against her by Defendant Joseph Franklin Henderson (“Henderson”), who was employed as a corrections officer at the George W. Hill Correctional Facility while Belt was an inmate. After careful consideration of the various arguments, ranging from the adequacy of Belt’s constitutional claims to the applicability of governmental and official immunity as defenses to the state-law causes of action, I will grant in part and deny in part Moving Defendants’ Motion to Dismiss.

I. RELEVANT BACKGROUND

According to Belt’s Amended Complaint, during September, October, and November of

2005, Belt was sexually assaulted by Henderson and threatened with further punishment if she told anyone about it. Henderson allegedly sexually assaulted Belt while transporting her back to the George W. Hill Correctional Facility (“the Facility”) after she was finished with her Work Release Program for the day. Belt also alleges that on November 7, 2005, Moving Defendants, and Defendants John and Jane Doe, allowed Henderson to leave the Facility with Belt for no reason and subsequently failed to make any attempt to find or return Henderson or Belt to the Facility after being advised of Henderson’s and Belt’s absence.

Belt also alleges that after she reported these instances of sexual assault to the Moving Defendants, they retaliated against her by removing her from the Work Release Program and placing her in protective custody. After the Honorable George Koudelis, Delaware County Court of Common Pleas, re-instated Belt to the Work Release Program, Belt alleges that Moving Defendants removed her a second time. Additionally, Belt alleges that Moving Defendants violated her rights by taking no action to protect her and failed to test her for sexually transmitted diseases. Moreover, Belt claims that Henderson had previously been investigated and arrested by the detectives of the Delaware County Criminal Investigation Division and charged with Institutional Sexual Assault, Bribery and Official Oppression.

Based on these allegations, Belt filed an Amended Complaint on April 26, 2006. Invoking 42 U.S.C. § 1983 and 21 U.S.C. § 1997, Belt asserts in her First Claim that Moving Defendants infringed upon her Fourth, Fifth, Eighth, and Fourteenth Amendment rights. Belt also brings state law tort claims for sexual assault and intentional infliction of emotional distress. On May 11, 2006, Moving Defendants filed their Motion to Dismiss Belt’s Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6).

II. JURISDICTION AND LEGAL STANDARD

Federal question jurisdiction exists under 28 U.S.C. § 1331, as this action is brought pursuant to 42 U.S.C. § 1983 and Belt alleges violations of federal constitutional rights. We also have supplemental jurisdiction, pursuant to 28 U.S.C. § 1367, to consider Belt's state law tort claims.

When deciding whether to grant a Rule 12(b)(6) Motion to Dismiss, I must accept as true all well-pleaded allegations in the complaint and view them in a light most favorable to Belt. Doe v. Delie, 257 F.3d 309, 313 (3d Cir. 2001). Therefore, Defendants' Motion will be granted only if it is clear that no relief could be granted under any set of facts that could be proved consistent with the allegations. Id.

III. DISCUSSION

Because I find that the allegations of the Amended Complaint, setting forth federal claims, are sufficient to support federal causes of action, the Moving Defendants' Motion with respect to them will be denied. Moving Defendants also argue that Belt's state law claims must be dismissed and that Belt cannot recover punitive damages against them. I will discuss these two issues below.

A. Belt's State Law Claims

The "Second Claim" and "Third Claim" of Belt's Amended Complaint are for "Sexual Assault" and "Intentional Infliction of Emotional Distress," respectively. However, it is clear that Belt's Sexual Assault claim is against Defendant Henderson, not Moving Defendants. Belt does not allege any facts to support the claim that Moving Defendants sexually assaulted her and, therefore, her sexual assault claim against Moving Defendants must be dismissed.

There are also problems with Belt's Intentional Infliction of Emotional Distress claim against Moving Defendants. Under the Pennsylvania Political Subdivision Tort Claims Act ("the Act"), 42 Pa. C.S.A. § 8541, et seq., local agencies are generally immune from tort liability. The Act states, in pertinent part:

Except as otherwise provided in the subchapter, no local agency shall be liable for any damages on account of any injury to a person or property caused by any act of the local agency or an employee thereof or any other person.

42 Pa.C.S.A. § 8541.

The Act provides that a local government entity may only be liable for injury to a person due to negligent acts that fall within one of the eight enumerated exceptions to immunity.¹ Belt's Amended Complaint, however, does not allege any facts that state a claim under the Act's exceptions. Therefore, the local government entities, here Moving Defendants Delaware County and DCBPI are entitled to immunity under the Act and Belt's Intentional Infliction of Emotional Distress Claim cannot proceed against them.² See e.g., Walker v. N. Wales Borough, 395 F. Supp. 2d 219, 230 (E.D. Pa. 2005).

Moving Defendants also argue that George W. Hill is entitled to immunity under the Act because he is an employee of Delaware County. However, the Act's immunity does not protect employees of local government entities when "it is judicially determined" that the government employee who caused the injury engaged in "willful misconduct." 42 Pa. C.S.A. § 8550. "For

¹ Under 42 Pa.C.S.A. § 8542, acts that may impose liability upon a local agency include: "(1) Vehicle liability; (2) Care, custody or control of personal property; (3) Care, custody or control of real property; (4) Trees, traffic controls and street lighting; (5) Utility service facilities; (6) Streets; (7) Sidewalks; and (8) Care, custody or control of animals." 42 Pa.C.S.A. § 8542(b).

² The immunity conferred by the Act does not protect Delaware County and DCBPI against Belt's federal claims. See Wade v. City of Pittsburgh, 765 F.2d 405, 407 (3d Cir. 1985).

purposes of the Tort Claims Act, ‘willful misconduct’ is synonymous with [the] term ‘intentional tort.’” Kuzel v. Krause, 658 A.2d 856, 859 (Pa. Commw. 1995). Therefore, the Act does not grant immunity to Moving Defendant George W. Hill for Belt’s intentional tort causes of action for intentional infliction of emotional distress.

Moving Defendants’ sole remaining argument is that Belt’s allegations of Intentional Infliction of Emotional Distress must fail because she does not allege “sufficiently outrageous” conduct to support her claim. See generally Kazatsky v. King David Memorial Park, 527 A.2d 988 (Pa. 1987) (supporting the proposition that the “gravamen of the tort of intentional infliction of emotional distress is outrageous conduct on the part of the tortfeasor”). The conduct complained of must be “so extreme in degree as to go beyond all possible bounds of decency as to be regarded as atrocious and utterly intolerable in a civilized community.” Jordan v. City of Philadelphia, 66 F. Supp. 2d 638, 642 (E.D. Pa. 1999).

Construing the Amended Complaint in the light most favorable to Belt, the question of whether Moving Defendants’ the GEO Group’s and George W. Hill’s conduct was sufficiently outrageous to constitute intentional infliction of emotional distress is a question on which reasonable minds could differ at this procedural juncture. Belt alleges that she was sexually assaulted by Defendant Henderson. She also alleges that the GEO Group, Inc. and George W. Hill knew that Defendant Henderson impermissibly left the Facility with Belt, but took no action to secure her return. Additionally, Belt alleges that after learning that Defendant Henderson had sexually assaulted her, the GEO Group, Inc. and George W. Hill retaliated against her by removing her from the Work Release Program, placing her in isolated custody where she was not allowed to have contact with other prisoners and was only permitted to leave her cell for one

hour per day, refusing to provide her medical treatment or tests to determine whether she had contracted a sexually transmitted disease, removing her privileges, and repeatedly harassing her in an effort to discourage her from pursuing a claim versus Defendant Henderson. These facts could, if proved, lead a reasonable mind to find the GEO Group, Inc. and George W. Hill committed acts “so extreme in degree as to go beyond all possible bounds of decency as to be regarded as atrocious and utterly intolerable in a civilized community.” Id. Accordingly, I will not dismiss Belt’s Third Claim against the GEO Group, Inc. and George W. Hill.

B. Punitive Damages

Moving Defendants rely solely on City of Newport v. Fact Concerts, Inc., 435 U.S. 247, 271 (1981), for their argument that they are not subject to punitive damages pursuant to Belt’s 42 U.S.C. § 1983 claims. However, the United States Supreme Court’s decision in City of Newport only states that municipalities are immune from punitive damage awards under 42 U.S.C. § 1983 because at common law a municipality was absolutely immune from punitive damages and in enacting § 1983 Congress did not clearly manifest an intention to abrogate this common law immunity. Id. Therefore, while municipal entities such as Delaware County and the DCBPI are not subject to punitive damages in this suit, City of Newport does not address whether non-municipal entities or individuals such as the GEO Group, Inc., and George W. Hill are entitled to the same immunity from punitive damages. Traditionally, individual defendants such as the GEO Group, Inc., and George W. Hill can be held liable in their individual capacities for punitive damages if the individual defendants’ conduct can be shown “to be motivated by evil motive or intent, or when it involves reckless or callous indifference to the federally protected rights of others.” Smith v. Wade, 461 U.S. 30, 56 (1983). Accepting all of Belt’s allegations

against Moving Defendants as true, dismissing Belt's claims for punitive damages against the GEO Group, Inc., and George W. Hill in their individual capacities would be improperly premature because, if proven, Belt's claims constitute callous indifference to her federally protected rights.

IV. CONCLUSION

For the aforementioned reasons, Moving Defendants Motion to Dismiss is granted in part as it relates to Belt's sexual assault claim. I also find that the Moving Defendants Delaware County and DCBPI are immune from Belt's state law claims under the Pennsylvania Political Subdivision Tort Claims Act and cannot be subject to punitive damages pursuant to Belt's § 1983 claim. Moving Defendants Motion to Dismiss is denied in all other respects.

An appropriate order follows.

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA**

SANDRA D. BELT,

Plaintiff,

v.

THE GEO GROUP, INC., COUNTY
OF DELAWARE, DELAWARE
COUNTY BOARD OF PRISON
INSPECTORS, GEORGE W. HILL,
JOSEPH FRANKLIN HENDERSON, and
JOHN AND JANE DOE,

Defendants.

CIVIL ACTION

No. 06 - 1210

ORDER

AND NOW, this 12th day of June, 2006, having considered the Motion to Dismiss Plaintiff's Amended Complaint pursuant to Federal Rule of Civil Procedure 12(b)(6) (Doc. No. 11) filed by Defendants the GEO Group, Inc., Delaware County, Delaware County Board of Prison Inspectors ("DCBPI"), and George W. Hill (collectively, "Moving Defendants") , and Plaintiffs' response thereto, it is hereby **ORDERED** that:

1. Moving Defendants' Motion to Dismiss is **GRANTED** as to the Second Claim of Plaintiff's Amended Complaint;
2. Moving Defendants Delaware County and DCBPI are immune from Belt's state law claims under the Pennsylvania Political Subdivision Tort Claims Act;
3. the assertion of punitive damages in the First Claim of Plaintiff's Amended Complaint is hereby dismissed with prejudice as against Delaware County, DCBPI, and the GEO Group, Inc. in its official capacity, and George W. Hill in his official capacity; and

4. Moving Defendants' Motion to Dismiss is **DENIED** in all other respects.

BY THE COURT:

/s/ Robert F. Kelly

Robert F. Kelly,

Sr. J.